

WEST VIRGINIA INFORMATIONAL LETTER

No. 20
October 17, 1983

NORRIS v. ARIZONA GOVERNING COMMITTEE

TO: All insurance companies authorized to transact insurance business in this State, and all other interested parties

This Informational Letter is intended to advise insurers of this Departments form and rate approval procedure which is being implemented to permit insurers to assist employers in complying with the United States Supreme Courts decision in Norris v. Arizona Governing Committee.

Earlier court decisions favoring the use of unisex rates -- such as Los Angeles Department of Water Power v. Manhart, 435 U.S. 702 (1978) -- have involved programs of GROUP life insurance and annuity benefits. However, the Norris decision involved an employer-sponsored deferred compensation program using INDIVIDUAL annuity contracts issued by insurers selected by the employer. The Norris decision requires that contributions made by employees to such programs after August 1, 1983, must be used to purchase benefits that are equal for men and women. Insurers involved in any way with employer-sponsored benefit plans are urged to study the Norris decision closely before deciding whether or not policy forms and/or rates are to be changed to comply with that decision.

As a result of this decision, this Department has determined that in addition to retirement benefits, OTHER TYPES OF INSURANCE PRODUCTS MAY BE AFFECTED by the Norris decision. A substantial number of employer-sponsored life, accident and sickness, annuity, and property-casualty insurance contracts may have to be amended immediately. Considering the anticipated volume of filings, this Department will permit "condensed" filings to assist the insurers in more timely approval of such filings. In order to permit insurers the opportunity to assist employers to comply with the Norris decision as quickly as possible, we respectfully recommend the following procedures:

1. Insurers are NOT required to file the entire policy form and/or rates for this Departments review and ultimate approval or disapproval. Rather, insurers may utilize a "condensed" filing procedure for compliance with the Norris decisions mandates. Please note, however, that insurers are still permitted to follow the normal filing procedures if so desired; the "condensed" procedures will require less preparation time for the insurer and less review time for the Insurance Department -- resulting in a more timely approval of the filing, but the decision to utilize the normal or the "condensed" filing procedures rests with each insurer.

2. Insurers using the "condensed" filing procedure must include, along with the submission (cover) letter to the Insurance Department, a certification that the forms and/or rates being amended are to comply with the Norris decision only, and that no other substantive changes have been made in the forms and/or rates being submitted. It is necessary to submit ONLY those specific policy form pages and/or rate tables (or rate sheets) which have been amended; it is NOT necessary to submit the entire policy form or the entire rating manual.

Please note that properly-completed form and/or rate filing abstracts are still required as part of this "condensed" filing procedure; please indicate, wherever appropriate, when requested information is not applicable. Also please note that all such filings must contain duplicate copies of the submission (cover) letter and the amended forms and/or rates, along with a postage-paid self-addressed return envelope; filings not submitted as such will not be formally acknowledged upon approval by this Department.

3. This "condensed" filing procedure will be permitted until further notice from this Department.

Since the effective date of the Norris decision was August 1, 1983, it is imperative that all insurers comply, to the extent necessary, with the mandates of that decision as quickly as possible. Therefore, insurers issuing any type(s) of employer-sponsored insurance contracts -- whether on a group basis or individually-underwritten, including but not limited to: life, accident and sickness, annuity and property-casualty -- which may be subject to the Norris decision are required to report to this Department how they intend to conform such contracts or policies to the requirements of that decision. Such reports should be made by letter addressed to: West Virginia Insurance Commissioners Office; James R. Ruegg, Director, Rates and Forms Division; 2100 Washington Street, East; Charleston, West Virginia 25305; postmarked no later than December 1, 1983.

Additional information and assistance with specific questions may be requested by contacting Mr. Ruegg at the above address or by telephone; he may be reached at (304) 348-2094, during normal business hours.

The following additional information is applicable to those insurers which issue life or annuity contracts on an employer-sponsored basis, both group and individual contracts:

The Executive Committee of the National Association of Insurance Commissioners (NAIC) at their September, 1983 Meeting in Tampa, Florida, agreed that: "Although there is some uncertainty as to the breadth of the Supreme Courts decision, it would seem to require that after August 1, 1983, employer pension plans may need to be funded by life insurance products that have identical nonforfeiture values for men and women. Since the 1980 CSO and 1980 CET Mortality Tables contain mortality rates that vary by both age and sex, it is very difficult if not impossible for companies to determine actual nonforfeiture values that are identical for men and women and also satisfy a sex-differentiated minimum standard."

There are several approaches which may be considered in an attempt to comply with the sex-neutral mandates of the Norris decision. Hereinafter are presented two such approaches which have been approved by this Office:

1. The Code of West Virginia of 1931, as amended, Chapter 33 -- Article 13 -- Section 30(4a) provides, in part: ". . . for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured."

To comply with the Norris decision, the insurer may opt to eliminate any age-setbacks for female insureds, thereby charging identical premium rates for both men and women. It should be

noted, however, that under such a procedure the insurer must provide identical nonforfeiture values for both men and women equally.

2. Those insurers issuing life and/or annuity contracts using sex-distinct premium rates and/or sex-distinct nonforfeiture values and retirement benefits, on or after August 1, 1983, as required by the Norris decision, may AT THE OPTION OF THE COMPANY implement a mortality table which is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F), with or without Ten-Year Select Mortality Factors. Such a blended table may be substituted for the 1980 CSO Table.

Similarly, such a mortality table which is of the same blend as used above, but applied to form a blend of the 1980 CET Table (M) and the 1980 CET Table (F), may be substituted for the 1980 CET Table.

Please note that tables designated (M) refer to male insureds, and those designated (F) refer to female insureds.

To determine the proper blend between the two tables -- those designated as (M) and (F), the insurer must first determine the market-share split between the male and female insureds for that particular insurer, giving proper "weight" considerations based on such blends. As a means of illustration: An insurers policyholders are primarily males; that insurer will find that its blended tables will closely parallel the current 1980 CSO Tables. An insurer whose policyholders are primarily females will find that the blended tables will closely parallel the 1980 CSO Tables with the age-setbacks. An insurer whose market is fairly evenly split between male and female insureds will find that its blended tables are somewhat an "average" of the two tables.

Please note that the Norris decision does NOT address those insurance contracts issued on a basis other than employer-sponsored -- such as personal contracts purchased by an individual consumer, an act unrelated to that consumers employment. Therefore, an insurer may issue the same kind of policy on a sex-distinct basis in some circumstances, and on a sex-neutral basis in other circumstances; such actions by the insurer will NOT violate this States unfair discrimination laws, nor the mandates imposed by the United States Supreme Court in its Norris decision.

Please be advised that it is the responsibility of the insurance company and/or marketing organization to notify all affected employees, home office or field underwriters, marketing representatives, and other persons involved in the design or placement of employer-sponsored insurance programs of the immediate and significant ramifications of the Norris decision.

This Department readily recognizes the complexity and uncertainty created by the Norris decision in regards to compliance with sex-neutral rating plans and sex-neutral nonforfeiture values and retirement benefits. Should you have questions concerning this Informational Letter, please direct them to Mr. Ruegg at the address and/or telephone number given herein.

Richard G. Shaw
Insurance Commissioner